

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JEFFERY O. PARKER,	)	CASE NO. 1:11 CV 2623
	)	
Plaintiff,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	
	)	
CACH, LLC, <i>et al.</i> ,	)	<u>OPINION AND ORDER</u>
	)	<u>AND ORDER</u>
Defendants.	)	

**CHRISTOPHER A. BOYKO, J.:**

*Pro se* Plaintiff Jeffery O. Parker filed this action against CACH, LLC (“CACH”), Attorney Michael J. Linden, Attorney Bryan Scott Hicks, and Attorney Kathryn H. Hogan. In the Complaint, Plaintiff alleges a judgment was unfairly taken against him in the Shaker Heights Municipal Court. He seeks reversal of the judgment.

Plaintiff also filed a Motion to Proceed *In Forma Pauperis*. That Motion is granted.

**I. BACKGROUND**

CACH, represented by Mr. Hicks, filed an action against Plaintiff in the Shaker Heights Municipal Court on October 19, 2009 for non-payment of a credit card debt. Plaintiff disputes the debt, saying he did not have a credit card with CACH. He was served with process on October 21, 2009. He states, “I denied in court that I owed money from a credit card that ended in #3923, I have

no record of this debt.” (ECF #1 at 3.) Nevertheless, he did not file a responsive pleading and a default judgment was granted to CACH on May 4, 2010. CACH then began to garnish Plaintiff’s wages. Plaintiff again states he does not owe this debt, and asks this Court to reverse the judgment of the Municipal Court and order return of his garnished wages plus interest.

## **II. LAW AND ANALYSIS**

### **Standard of Review**

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the district court is required to dismiss an *in forma pauperis* action under 28 U.S.C. §1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact.<sup>1</sup> *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). A claim lacks an arguable basis in law or fact when it is premised on an indisputably meritless legal theory or when the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. A cause of action fails to state a claim upon which relief may be granted when it lacks “plausibility in the complaint.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 564 (2007). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The factual allegations in the pleading must be sufficient to raise the right to relief above the speculative level on the assumption

<sup>1</sup> An *in forma pauperis* claim may be dismissed *sua sponte*, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997); *Spruytte v. Walters*, 753 F.2d 498, 500 (6th Cir. 1985), cert. denied, 474 U.S. 1054 (1986); *Harris v. Johnson*, 784 F.2d 222, 224 (6th Cir. 1986); *Brooks v. Seiter*, 779 F.2d 1177, 1179 (6th Cir. 1985).

that all the allegations in the Complaint are true. *Bell Atl. Corp.*, 550 U.S. at 555. The Plaintiff is not required to include detailed factual allegations, but must provide more than “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S.Ct. at 1949. A pleading that offers legal conclusions or a simple recitation of the elements of a cause of action will not meet this pleading standard. *Id.* In reviewing a Complaint, the Court must construe the pleading in the light most favorable to the Plaintiff. *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir.1998).

### **Rooker-Feldman Doctrine**

To the extent Plaintiff is asking this Court to reverse a state court judgment, his claim must be dismissed. United States District Courts do not have jurisdiction over challenges to state court decisions. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n. 16 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). Federal appellate review of state court judgments can only occur in the United States Supreme Court, by appeal or by writ of certiorari. *Id.* Under this principle, generally referred to as the Rooker-Feldman Doctrine, a party losing his case in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States District Court based on the party’s claim that the state judgment itself violates his or her federal rights. *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994). Federal jurisdiction cannot be invoked merely by couching the claims in terms of a civil rights action. *Lavrack v. City of Oak Park*, No. 98-1142, 1999 WL 801562, at \*2 (6th Cir. Sept. 28, 1999); *see Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir.1992).

The United States Sixth Circuit Court of Appeals has applied two elements to a Rooker-Feldman analysis. First, in order for the Rooker-Feldman doctrine to apply to a claim presented in

federal district court, the issue before the court must be inextricably intertwined with the claim asserted in the state court proceeding. *Catz v. Chalker*, 142 F.3d 279, 293 (6th Cir. 1998); *see Tropf v. Fidelity National Title Insurance Co.*, 289 F.3d 929, 937 (6th Cir. 2002). “Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment.” *Catz*, 142 F.3d at 293. The Rooker-Feldman doctrine applies when the party losing his case in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself. *Coles v. Granville*, 448 F.3d 853, 857-59 (6th Cir. 2006).

Second, the Rooker-Feldman doctrine precludes a district court’s jurisdiction where the claim is a specific grievance that the law was invalidly or unconstitutionally applied in Plaintiff’s particular case as opposed to a general constitutional challenge to the state law applied in the state action.

*Id.*

In the present action, Plaintiff directly attacks the state court’s judgment. All of the allegations in Complaint concern specific grievances that the Municipal Court incorrectly resolved factual issues in Plaintiff’s case, and are clearly predicated on his belief that the state court was mistaken in rendering its decisions against him. Furthermore, Plaintiff requests as relief that the state court judgment be reversed and the money garnished to satisfy the judgment be returned to him with interest. Any review of federal claims asserted in this context would require this Court to review the specific issues addressed in the state court proceedings against him. The Court lacks subject matter jurisdiction to conduct such a review or grant the relief as requested. *Feldman*, 460 U.S. at 483-84 n. 16; *Catz*, 142 F.3d at 293.

### **Res Judicata**

To the extent Plaintiff is simply seeking to relitigate this matter in federal court, he is procedurally barred. Federal courts must give the same preclusive effect to a state-court judgment as that judgment receives in the rendering state. 28 U.S.C. § 1738; *Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir.2007); *Young v. Twp. of Green Oak*, 471 F.3d 674, 680 (6th Cir.2006) (“Well-settled law directs federal courts to give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.”). To determine whether to give preclusive effect to a state court judgment, the federal court must apply the law of preclusion of the state in which the prior judgment was rendered. *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81 (1984). As an Ohio state court granted default judgment in CACH’s favor, this Court must look to Ohio law regarding *res judicata*.

In Ohio, the doctrine of *res judicata* encompasses the two related concepts of claim preclusion and issue preclusion. *State ex rel. Davis v. Pub. Emp. Ret. Bd.*, 120 Ohio St.3d 386, 392, 899 N.E.2d 975, 981 (2008). “Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382 (1995). Claim preclusion also bars subsequent actions whose claims “could have been litigated in the previous suit.” *Id.* By contrast, issue preclusion, or collateral estoppel, prevents the “relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies,” even if the causes of action differ. *Id.*

Here, both issue and claim preclusion apply to bar this federal action. The parties to this action are the same as the parties in the state court action, and the claim raised here arises out of the same transaction that was the subject matter of the Municipal Court action. Moreover, Plaintiff

alleges he asserted in that action that he did not have a credit card with CACH, and disputed the debt. That issue was decided by the Municipal Court and this Court must give full faith and credit to that judgment. Plaintiff cannot litigate this matter for a second time in this Court.

### **III. CONCLUSION**

Accordingly, Plaintiff's Motion to Proceed *In Forma Pauperis* is granted, and this action is dismissed pursuant to 28 U.S.C. §1915(e). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.<sup>2</sup>

IT IS SO ORDERED.

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S/Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE

March 26, 2012

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<sup>2</sup> 28 U.S.C. § 1915(a)(3) provides:

An appeal may not be taken *in forma pauperis* if the trial court certifies that it is not taken in good faith.